Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Developing a Unified Intercarrier Compensation Regime	CC Docket No. 01-92

Reply Comments of the Information Technology Association of America

The Information Technology Association of America ("ITAA") hereby replies to the comments filed by the Bell Operating Companies ("BOCs") in response to the Commission's Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding. [1] The Commission initiated this proceeding to consider whether to create a unified regime governing compensation arrangements between telecommunications carriers. The BOCs, however, have used this proceeding to renew their criticism of the Commission's long-standing recognition that Information Service Providers ("ISPs") are users of telecommunications, rather than carriers. Specifically, the BOCs once again object to the Commission's decision not to require ISPs that provide subscribers with the ability to send voice traffic over the Internet (often called "Internet telephony") to pay carrier access charges or make direct payments to the Universal Service Fund ("USF"). While ITAA agrees with the need to reform the current inter-carrier compensation regime, there is no justification for the imposition of common carrier obligations on ISPs.

[1] *Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("*Notice*").

I. THE COMMISSION HAS PROPERLY DECLINED TO EXTEND CARRIER ACCESS CHARGES TO ISPs

BellSouth, Qwest, and SBC make the same basic allegation: providers of voice telecommunications services are "disguis[ing] their carrier operations as ISP operations in order to take advantage of the access charge exemption."[2] This, in turn, has caused "many end users . . . [to] choose Internet telephony in order to avoid, through the ESP exemption, the inefficiently structured per-minute access charges."[3] The end-result is to create a "widely available" bypass mechanism that threatens to "erode[] ILEC switched access revenues."[4]

The BOCs' assertions are plainly incorrect. As an initial matter, there is no evidence that providers of voice services are "disguising" themselves as ISPs in order to avoid paying carrier access charges.[5] As the Commission has recognized, there are a number of ways in which voice traffic can be sent over the Internet.[6] Many of these configurations – such as those that involve use of software to send voice traffic between two PCs – bear little resemblance to conventional voice telephony. While "phone-to-phone" configurations look more like conventional voice telephony, providers are choosing to send voice traffic over the Internet in order to realize the benefits of packet-switched technology, rather than to evade the decreasing cost of carrier access charges.

---

[2] Comments of BellSouth (Aug. 21, 2001) ("BellSouth Comments") at 3.

[3] Comments of Qwest Communications International, Inc. (Aug. 21, 2001) ("Qwest Comments") at 32.

[4] Comments of SBC Communications, Inc. (Aug. 21, 2001) ("SBC Comments") at 16.

[5] As ITAA explained in its initial comments, "[T]he term "ESP exemption," while sometimes used as convenient shorthand, is a misnomer. The Commission has never '*exempted*' ESPs from paying carrier access charges. Rather, the Commission has repeatedly recognized that, because ESPs are end-users – rather than carriers – they *are not subject to* the carrier access charge regime." Comments of the Information Technology Association of America (Aug. 21, 2001) at 3 (emphasis in original).

[6] *Federal-State Joint Board on Universal Service,* Report to Congress, 13 FCC Rcd 11501, 11541-42 ¶¶ 83-85 (1998) ("*Universal Service Report to Congress*").

In any case, while Internet telephony services are growing, there is no evidence that these services currently are having any discernible impact on the ILECs' access charge revenues. Indeed, one analyst has estimated that, in the year 2000, the delivery of voice traffic over the Internet resulted in the loss of between \$53 and \$121 million in ILEC access revenues – about one-half of one percent of the \$17 billion that the ILECs collected in access revenues.[7]

There are two reasons why the growth of Internet telephony has had such a minimal impact on ILEC access revenues. First, the Internet telephony market remains in its infancy. Despite significant improvements, most Internet telephony applications remain more difficult to use, and provide somewhat lower quality connections, than conventional circuit switched offerings. As a result, for many consumers, they are not yet a viable substitute for conventional circuit switched services.

Second, in many cases, sending voice traffic over the Internet does not result in the loss of ILEC access revenue. The vast majority of voice traffic sent over the Internet (perhaps as much as 85 percent) is sent to locations outside the United States.[8] Even if these calls had been sent over the public switched network, the ILECs would not have received a terminating access charge payment. Domestically, a significant portion of the voice traffic sent over the Internet represents traffic that would never have been sent over the public switched network and, therefore, would not have generated any access charge payments.[9] Such traffic is typically originated by those subscribers for whom low price is especially important, such as students.

---

[7] *See* HAI Consulting, Inc., *Local Telephone Companies: Banking the Benefits of the Internet* at 37-38 (forthcoming study prepared for the Internet Access Coalition).

[8] *See id.* at 36.

[9] *See id.* at 36-38.

In the *Universal Service Report to Congress*, the Commission re-affirmed the non-regulated status of all information service offerings. At the same time, the Commission made clear that it is prepared to determine, on a case-by-case basis, whether a particular provider of "voice-over-the-Net" services is, in fact, offering to the public an interstate, interexchange telecommunications service for which carrier access charges are due.[10] Significantly, to date, no ILEC has presented the Commission with a complaint alleging that a specific provider of Internet telephony services has improperly failed to pay access charges.

Until such time – if ever – as the Commission eliminates the carrier access charge regime, the Commission should not depart from the approach adopted in the *Universal Service Report to Congress.* Indeed, changing course now would have a number of adverse consequences. For example, requiring ISPs that provide Internet telephony to pay domestic carrier access charges could undermine the U.S. government's long-standing opposition to proposals, still under discussion in the International Telecommunications Union, to extend the international equivalent of carrier access charges – the inefficient accounting rate regime – to international Internet traffic.

II. THE COMMISSION HAS PROPERLY HELD THAT ISPs ARE NOT REQUIRED TO MAKE DIRECT PAYMENTS TO THE UNIVERSAL SERVICE FUND

The BOCs also renew their objection to the Commission's well-established decision not to require ISPs to make direct payments to the Universal Service Fund. Here, again, BellSouth and SBC focus on ISPs that enable subscribers to send voice traffic over the Internet, claiming that the Commission's policy improperly "shifts the burden" of funding universal service to telecommunications carriers.[11] Qwest goes further, suggesting that Commission should require

---

[10] *Universal Service Report to Congress*, 13 FCC Rcd at 11541 ¶ 83.

[11] BellSouth Comments at 3 n.4; SBC Comments at 14.

any ISPs that own their own transmission facilities to make USF payments because they are providing telecommunications to themselves.[12] Here, again, the BOCs' assertions are without merit.

The Commission has properly found that – because they are users of telecommunications, rather than carriers – ISPs (including those that provide the ability to send voice traffic over the Internet) are not obligated to make direct payments to the USF.[13] However, contrary to the BOCs' assertion, ISPs shoulder a significant part of the burden of providing the revenue used to fund universal service through their payment of various end-user charges. These include the payments of the Subscriber Line Charge (used to defer local loop costs), the payment of above-cost charges for local business line service (used to generate implicit subsidies for residential service), and the "pass-through" of the usage-based USF payment made by carriers based on end-user revenue.

The Commission has previously considered, and rejected, proposals to require ISPs that own their own facilities to make direct payments to the USF based on the value of the telecommunication services that they "provide to themselves." As the Commission concluded in the *Universal Service Report to Congress,* "there are significant operational difficulties associated with determining the amount of . . . an Internet service provider's [telecommunications end user] revenues to be assessed for universal service purposes."[14] Qwest has not even attempted to suggest how these operational difficulties could be over-come.

---

[12] *See* Qwest Comments at 37 (citing *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as Amended,* Order on Remand, CC Docket No. 96-149, FCC 01-140, ¶¶ 38-39 (rel. Apr. 27, 2001)).

[13] *See Universal Service Report to Congress*, 13 FCC Rcd at 11536-40 ¶¶ 73-82.

[14] *Id.* at 11534 ¶ 69.

CONCLUSION

For the foregoing reasons, and those contained in ITAA's initial comments, the Commission should re-affirm that it will not extend the carrier access charge regime to ISPs or require ISPs to make direct payments to the Universal Service Fund.

Respectfully submitted,

INFORMATION TECHNOLOGY ASSOCIATION OF AMERICA

By:

Jonathan Jacob Nadler
Stephen J. Duall
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Box 407
Washington, D.C. 20004
(202) 626-6838

Counsel for the Information Technology Association of America

November 5, 2001